

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 1 General Policies

Subject: 1.3 Ratification of Unauthorized Commitments

PURPOSE: This standard practice (SP) describes the procedures for evaluating and processing unauthorized commitments.

POLICY: Only formally designated individuals may commit the Laboratory to the expenditure of funds. Commitments by individuals without delegated authority to commit the Laboratory must undergo a ratification process to determine if they would otherwise have been proper and in the best interest of the Laboratory. (See SP 1.2, *Delegation of Procurement Authority*).

SCOPE: This SP applies to those cases where a contractual commitment was made by an individual lacking the required delegated procurement authority or by an individual exceeding the level of their delegated authority.

DEFINITIONS:

Disciplinary Action Disciplinary actions are corrective measures taken against unauthorized individuals or other individuals who have helped to cause unauthorized commitments. Disciplinary actions may include oral or written warnings, change of job assignment, temporary or indefinite within-range salary decreases, demotion, suspension without pay, dismissal, or other action deemed appropriate under the circumstances. [See the LBNL *Regulations and Procedures Manual (RPM)*, Section 2.05, Part C, *Corrective Action* for more details regarding disciplinary and corrective actions.]

Division Representative Employee acting as the contact from the Division that committed the unauthorized commitment.

Emergency Circumstances An emergency circumstance is any circumstance requiring that a procurement be made in order to avoid, eliminate, or reduce imminently hazardous or destructive situations involving persons or property, including the potential loss of important experimental data or hardware.

Indicators of Unauthorized Procurement The following is a non-exclusive list of indicators that an unauthorized procurement has been made:

- A requisition or memorandum requesting an item and/or service that has already been received or started,
- An invoice, or other request for payment, without a purchase order number, or in excess of a subcontracted amount or ceiling, or
- A commitment made after the expiration of a blanket subcontract or other procurement action.

Ratification Ratification is the act of approving an unauthorized commitment.

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Ratification is only made after the circumstances and facts surrounding the unauthorized commitment are analyzed and the Ratifying Official determines that the commitment was in the best interest of the Laboratory.

Ratifying Official

Ratifying Officials include:

- The Procurement & Property Manager if the amount of the unauthorized commitment is \$50,000 or less, and if this is the individual's first unauthorized commitment in the past two years.
- The Chief Financial Officer (CFO) if the amount of the unauthorized commitment is over \$50,000, or if the individual has made other unauthorized commitments in the past two years.

Unauthorized Commitment

An unauthorized commitment is a written or oral contractual commitment or agreement made by an individual who lacks or does not have sufficient authority to make such commitments or enter into agreements on behalf of the Laboratory.

Examples of unauthorized commitments include, but are not limited to, the following:

- Committing funds or expenditures in excess of one's designated procurement authority.
- Commitment for the expenditure of funds by an unauthorized individual.
- Requesting or accepting materials or services from a vendor when a subcontract has not been awarded. (Note: requisitions are not subcontracts.)
- Authorizing a vendor/subcontractor to perform work or deliver materials without written, delegated authority.
- Authorizing work that exceeds the total allowable expenditures or extends beyond the current term of a subcontract.
- Ordering materials or services that are outside of the scope of the subcontract.
- Authorizing a release under a blanket subcontract without formal designation in the subcontract as having authority to issue releases.
- Improper use of the Laboratory procurement credit card.
- Directing another person to do any of the above, whether intentionally or unintentionally.

Unauthorized

An unauthorized individual is any individual who makes an

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Individual

unauthorized commitment on behalf of the Laboratory.

PROCEDURES:

Commitment Ratification Process

When a suspected unauthorized commitment is discovered, the designated procurement specialist will:

- With the assistance of a Procurement Supervisor, determine whether the suspected unauthorized action should be pursued as an unauthorized commitment;
- Immediately advise the subcontractor not to commence work and/or ship the product until it is determined whether the procurement will be ratified. If work has commenced, immediately notify the subcontractor that work is being performed at its own risk, and advise the subcontractor to stop work;
- Advise the unauthorized individual that if material items have been delivered, the items are not to be used until a final ratification determination has been made;
- Notify the unauthorized individual of the prohibition against Laboratory personnel making written or oral commitments without delegated authority;
- Instruct the unauthorized individual on proper procedures for initiating and processing contractual commitments (i.e., purchase orders, subcontract modifications and changes).

The procurement specialist then obtains a Ratification Log Number, completes the information in Section I of the *Unauthorized Commitment* form (Exhibit 1.3.a) and forwards the entire form to a responsible Division Representative, attaching any documentation associated with the unauthorized commitment and an explanation as to what occurred.

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Division Response — Upon receipt of this form, the Division Representative will fill-in the items of information in Section II of the *Unauthorized Commitment* form and prepare a brief memo addressing the following:

- The circumstances that led to the unauthorized commitment and explanation as to why procurement procedures were not followed;
- A description of the material or service and why it is needed;
- An explanation as to why the selected vendor was chosen and a list of other vendors considered. If the unauthorized commitment exceeds \$100K, a *Sole Source Justification* must also be completed (See SP 6.2, *Sole-Source Subcontracts*.)
- The estimated cost or agreed-to price.
- The reason(s) why ratification of the unauthorized commitment is in the best interest of the Laboratory.
- A statement as to whether the vendor has commenced performance, when started, amount of the work that has been completed, what products have been delivered, and whether the performance is continuing.
- The actions that will be taken to assure that unauthorized commitments will not occur in future and what disciplinary action has been initiated with the unauthorized individual.

The responsible Division Director (no designee) will review the memo and documentation to determine whether the ratification and the disciplinary action are appropriate, marking the appropriate check-blocks and signing Section II of the form.

If ratification is requested, a fully executed purchase requisition, along with all required documentation (including *Sole Source Justification* if the unauthorized commitment exceeds \$100K) shall be returned to the procurement specialist with the form and memo.

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Procurement Specialist Analysis — The *Unauthorized Commitment* form, along with the documentation mentioned above, is returned to the procurement specialist who reviews the package for completeness and accuracy, paying particular attention to the veracity of the statements in completing Section III.A and also completes Section III.B. The procurement specialist reviews the Laboratory's unauthorized commitment database to ascertain the number of unauthorized procurements, if any, committed by the individual and Division in the past two years. The procurement specialist then enters these numbers in the space provided in Section III.C and adds any additional comments or recommendations in Section III.D.

Recommendation to Ratify — Based on the Division's response to Section II and answers to Section III, the procurement specialist and the procurement supervisor will, in turn, make recommendations to the Ratifying Official.

In order for the unauthorized commitment be ratified, the following conditions must exist:

- The materials are an allowable cost under Prime Contract 31;
- The vendor is not listed on the debarred list;
- The materials or services are needed by the Laboratory;
- The vendor does not have a conflict of interest;
- If a foreign commitment, purchase is justified by the *Buy American Act*;
- If a sole source commitment, the sole source justification is adequate;
- The price is determined to be reasonable;
- A properly executed purchase requisition has been prepared with viable project number and authorization signature;
- All necessary documents and approvals are complete;
- The Division's memo is complete, properly executed, and approved by the Division Director; and
- Ratification is in the best interests of the Laboratory.

The unauthorized individual may be held accountable for any costs deemed unjustifiable by the Ratifying Official (i.e. excessive transportation costs, delay or demurrage, and costly terms and conditions.)

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Recommendation Not to Ratify — When an unauthorized commitment is not ratified, unnecessary costs must be recouped from the unauthorized individual. Such unnecessary costs may include:

- Transportation charges,
- Re-stocking charges, or
- Cancellation/termination costs.

Determination by the Ratifying Official — After the Ratifying Official has made the final determination, the fully executed *Unauthorized Commitment* form is returned to the procurement specialist who will perform one or more of the following:

- Follow-up with the vendor involved in the unauthorized commitment. This may involve properly placing a subcontract or canceling all or part of the original commitment. If the Laboratory is only responsible for paying part of the costs, the vendor will be informed as to who will be responsible for paying the balance of the costs. (Note: In consultation with the Division and Accounts Payable, Procurement will make a determination as to whether the vendor or the Laboratory will collect the unauthorized costs from the individual responsible for incurring them.)
- Send a copy of the fully executed *Unauthorized Commitment* form to the Division Representative. The Division has the responsibility of completing disciplinary and corrective actions to assure that unauthorized commitments do not take place in the future and collecting any costs due from the unauthorized individual. Disciplinary action should be based, in part, on the number and severity of prior unauthorized commitments made by the individual over the previous 24 months.
- Send a copy of the fully executed *Unauthorized Commitment* form to the Procurement individual assigned to maintain the database of unauthorized commitments. The necessary information will be subsequently entered into the database. Unauthorized procurement records are kept for a minimum of three years from the date of ratification determination.

Responsibility for determining the amount owed by the unauthorized individual rests with Procurement. Responsibility for ensuring that payment is made by the unauthorized individual rests with the Division.

Emergency Circumstances

If an emergency circumstance arises during normal working hours, there are always individuals in Procurement, and often in the Division, with sufficient written, delegated procurement authority to obtain emergency materials or services without

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having to resort to an unauthorized commitment.

Outside of normal working hours, to avoid having to make an unauthorized commitment in an emergency circumstance, it is recommended that each Division do one or more of the following:

- Maintain a reasonable inventory of replacement or repair items at the Laboratory in case of emergency.
- Identify individuals who have procurement authority that support the Division. Make the individuals' names and home phone numbers available to people who work after hours or on weekends.
- Set-up blanket subcontracts for items and/or services that might be needed in an emergency. Ensure that people working after hours or on weekends know about the blanket subcontracts and have the proper authorization to use them in an emergency.

If none of the above mechanisms are available or sufficient to make a necessary, timely authorized procurement in the face of an emergency circumstance, the individual responsible for making an emergency commitment must notify Procurement as soon as is possible after the commitment is made, followed immediately by an approved requisition.

Legitimate emergency commitments made outside of normal working hours will not be processed as unauthorized commitments as long as appropriate requisitions, approvals and written emergency justification are provided on the first business day following the occurrence.

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RESPONSIBILITIES:

**Procurement
Specialist**

The designated procurement specialist will:

- Ensure that a procurement action is not processed until an unauthorized commitment is ratified;
- Initiate the process for documentation and approval of an unauthorized commitment, making sure that all activities regarding the action are documented;
- Assist the Division Representative in completing Section II of the *Unauthorized Commitment* form;
- Make a determination that the commitment would have otherwise been proper;
- Obtain approvals of the Procurement Supervisor and Ratifying Official; and
- Negotiate, prepare and award the subcontract, ensuring adherence to Laboratory policies and procedures regarding unauthorized commitments.

**Division
Representative**

The Division representative, with the assistance of the individual who made the unauthorized procurement, is responsible for:

- Completing Section II in the *Unauthorized Commitment* form, including the memo and all required documentation;
- Obtaining the required Division Director approval; and
- Submitting the package to the procurement specialist.

Ratifying Official

The Ratifying Official is responsible for:

- Reviewing justification documents for an unauthorized commitment to assure adherence to normal Laboratory requirements,
- Ratifying an unauthorized commitment when its ratification meets the conditions identified in this SP under *Recommendation to Ratify*, and
- Ensuring adherence to Laboratory policies and procedures regarding unauthorized commitments.

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**Procurement
Individual
Responsible for
Maintaining the
Database of
Unauthorized
Procurements**

The Procurement individual assigned responsibility for maintaining the database of unauthorized procurements will:

- Maintain a database of unauthorized commitments,
- Maintain a master file of *Unauthorized Commitment* forms, and
- Provide data regarding prior unauthorized commitments made by the unauthorized individual and the Division.

REFERENCES:

LBNL Regulations and Procedures Manual (RPM), Section 2.05
Management/Employee Relations, Part C, Corrective Action

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Log # _____

Notification, Justification, Analysis, Recommendations and Final Determination**I. Notification from Procurement:**

A. In accordance with the Laboratory Procurement Policy and Standard Practices Manual (SP 1.3), Procurement believes that an unauthorized commitment was made as follows:

1. Description of the unauthorized commitment: _____

2. Division responsible for the unauthorized commitment: _____

3. Date the above unauthorized commitment was made: _____

4. Firm with which unauthorized commitment was placed: _____

5. Approximate value of the unauthorized commitment: \$ _____

6. Documentation of the unauthorized commitment, if any, is attached to this form.

B. Based on the above information, the firm identified above has been notified as checked-off below:

☐ Not to commence any work or make any shipments.

☐ Not to make any change(s) that were ordered, directed and/or authorized.

☐ To stop any additional work or shipments from being made.

☐ That any work ordered, directed and/or authorized is performed at its own risk.

☐ That payment for materials or services cannot be made unless or until a subcontract is issued.

C. Information in this section was prepared by: _____, Date: _____

II. Explanation by the Division and Request for Ratification:

A. A representative of the Division must provide the following information and memo, obtain approval from the Division Director, then send this form and memo, along with the additional documentation mentioned below, to the Procurement representative identified at the bottom of Section I above, Mailstop 937-200.

1. LBNL Division that made the unauthorized commitment: _____

2. Individual who made the unauthorized commitment: _____

3. Name of the above individual's supervisor: _____

4. Project # to be used _____, Name of Business Manager: _____

5. In a separate memo, answer all of the following questions. This memo must be signed by the following three individuals: 1) the person who made the unauthorized commitment, 2) his/her supervisor, and 3) the Business Manager responsible for the project number used on the new requisition.

a. What was ordered and what is the Laboratory's need for the material(s), service(s) or change(s) that are involved in the unauthorized commitment?

b. What were the circumstances that led to the unauthorized commitment?

c. Why was the selected vendor chosen and what other vendors were considered?

d. What is the estimated cost or agreed-to price and how much of the ordered work has been delivered or completed?

e. Why is ratification of the unauthorized commitment in the best interest of the Laboratory?

f. What actions will be taken to assure that unauthorized commitments will not occur in the future and what disciplinary action has been initiated with the individual who made the commitment?

B. Division Director Approval

I agree () /disagree () that this request for ratification is appropriate and that the unauthorized commitment was made in the best interest of the Laboratory.

I accept () /do not accept () the proposed disciplinary action as appropriate for the circumstances.

Division Director name: _____ Signature: _____

C. Upon approval by the Division Director prepare a fully executed requisition and all other required documentation, including a sole source justification if required, as should have been done to initiate the procurement action.

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Exhibit: 1.3.a Unauthorized Commitment

III. Analysis by the Procurement Specialist:

A. Procurement has determined that those statements below which are checked, are true:

- ☐ The materials or services are an allowable cost under Contract 31.
- ☐ The vendor is not listed on the debarred list.
- ☐ The materials or services are needed by the Laboratory.
- ☐ The sole source justification is adequate.
- ☐ The price is determined to be reasonable.
- ☐ A properly executed requisition with a viable project number and authorized signature is prepared.
- ☐ All required documentation and approvals necessary to make the procurement have been obtained.
- ☐ The Division's memo is complete and properly executed, and approval is signed by the Division Director.
- ☐ The obligation created by the unauthorized commitment is in the best interests of the Laboratory.

B. Procurement has determined that those statements below which are applicable and are checked, are true.

- ☐ If a foreign purchase, the procurement is justified under the *Buy American Act*.
- ☐ If a conflict of interest exists, the Conflict of Interest Coordinator considers it to be mitigated.

C. The Procurement Specialist has reviewed the Laboratory's database of unauthorized commitments and found:

1. The individual has been responsible for _____ additional unauthorized commitments in the past 2 years.
2. The Division has been responsible for _____ additional unauthorized commitments in the past 2 years.

D. Comments and/or recommendations by the Procurement Specialist based on his/her analysis:

IV. Recommendations by Procurement:

Based on a review of Section III above, the Division's memo and its accompanying documentation,

1. The Procurement Specialist (____ does, ____ does not) recommend ratification.

Comments (e.g. partial ratification): _____
Signed, _____, date _____

2. The Procurement Supervisor (____ does, ____ does not) recommend ratification.

Comments (e.g. partial ratification): _____
Signed, _____, date _____

3. The Procurement and Property Manager (____ does, ____ does not) recommend ratification.

(Required only if the CFO makes the final determination - see below.)

Comments (e.g. partial ratification): _____
Signed, _____, date _____

V. Final Determination:

(Procurement and Property Manager if \$50,000 or less, and if the individual has made no other unauthorized commitments in past 24 months.)

(Chief Financial Officer if over \$50,000, or if the individual has made one or more unauthorized commitments in past 24 months.)

A. Based on the recommendations in Section IV, a review of Section III, the Division's memo and its accompanying documentation, I hereby (____ ratify, ____, partially ratify, ____ do **not** ratify) this unauthorized commitment.

Signed, _____, date _____

B. The following actions are recommended:

November 1, 2005